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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

FERIDOUN DARDASHTI, Plaintiff and Respondent, v. MEHRDAD DARDASHTI, Defendant and Appellant.	B283778 (Los Angeles County Super. Ct. No. BC591322)

APPEAL from a judgment of the Superior Court of Los Angeles County, Stephanie Bowick, Judge. Affirmed.

Keiter Appellate Law, Mitchell Keiter for Defendant and Appellant.

Joseph S. Socher, for Plaintiff and Respondent.

INTRODUCTION

Respondent Feridoun Dardashti filed this action for quiet title against his son, appellant Mehardad Dardashti, alleging that appellant had forged his signature on a grant deed transferring ownership of his home to appellant. Following a bench trial, the court agreed and found the deed void. On appeal, appellant claims the trial court erred in denying his motion for a mental examination of respondent, admitting certain hearsay testimony, and curtailing his testimony about the parties' mutual check-writing authority. Finding no reversible error, we affirm.

FACTUAL AND PROCEDURAL HISTORY

A. *The Grant Deed and the Lawsuit*

In 2015, appellant signed the names of his parents on a grant deed transferring title to the parents' home in Beverly Hills from the parents' family trust to appellant's family trust. Several months later, respondent sued appellant for quiet title, asserting that appellant had forged the deed. Paridokht Dardashti, respondent's wife and appellant's mother, was not a party to the litigation.

Appellant filed an answer and a cross-complaint. In his answer, appellant asserted, among other things, that respondent lacked capacity to sue due to mental incompetence. In his cross-complaint, appellant alleged that in 2012, he and his parents entered into a written contract for the sale of the parents' home to appellant. The cross-

complaint sought specific performance of the alleged contract.[1]

B. *Appellant's Pretrial Motion for a Mental Examination*

Before trial, appellant moved to compel respondent to undergo a mental examination. He asserted an examination was needed to determine whether respondent, an elderly man, was competent to bring the action on his own behalf.[2] In support of his motion, appellant provided declarations describing incidents that, according to appellant, cast doubt on respondent's mental competence. The trial court ordered

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[1] In his cross-complaint, appellant also named his brother, Mahyar Dardashti, as a cross-defendant, asserting a claim of intentional interference with contractual relations. Appellant alleged that Mahyar unduly influenced respondent and persuaded him to repudiate the 2012 contract. Mahyar filed an anti-SLAPP motion, arguing that appellant's cross-claim against him was based on protected activity. The trial court denied the motion, but this court reversed on appeal. (*Dardashti v. Dardashti* (Mar. 20, 2018, B276297) [2018 Cal. App. Unpub. LEXIS 1819, at *2].) Mahyar is not a party to the current appeal.

[2] Mental incompetence is a legal disability that "'deprives a party of the right to come into court.'" (*Color-Vue, Inc. v. Abrams* (1996) 44 Cal.App.4th 1599, 1604.) Under Code of Civil Procedure section 372, subdivision (a)(1), a mentally incompetent person who is a party must appear by a representative, such as a guardian or guardian ad litem. (Code Civ. Proc., § 372, subd. (a)(1).)

respondent to submit to a deposition "in lieu of a mental examination."

Appellant subsequently filed a document titled, "Supplemental Brief in Support of Motion for Mental Examination of [Respondent]." In that filing, appellant included notes from two physicians. Both stated that respondent had been diagnosed with Alzheimer's disease. One of the notes also stated that respondent had trouble making financial decisions. Relying on those notes, appellant stated, "Now that two doctors have attested to [respondent]'s lack of mental capacity, it would appear that the mental examination sought by [appellant] is no longer necessary . . . ." Appellant concluded his filing by requesting a hearing on respondent's capacity to sue. Following a hearing, the trial court denied appellant's motion for a mental examination of respondent.

C. *The Trial*

The case proceeded to a bench trial. At trial, appellant admitted he had signed both of his parents' names on the grant deed. In an acknowledgment attached to the deed, a notary public falsely attested that the parents had signed the deed in his presence. Appellant asserted that he had discussed the deed with his parents before executing it, and that respondent had instructed him to proceed with the transfer. He claimed the transfer complied with the alleged 2012 contract, which he offered into evidence. The document

appellant proffered contained the purported signatures of both of his parents.

Respondent testified that appellant had asked him to transfer ownership of his home to appellant but he had refused. Respondent did not recall signing a contract to transfer the home to appellant or asking appellant to sign a deed for him, and he testified the signature on the alleged 2012 contract was not his. Respondent acknowledged having trouble with his memory but claimed to remember "very important" subjects.

Mahyar Dardashti, respondent's son and appellant's brother, testified about his discovery of the grant deed. Mahyar stated that after he had shown the deed to his parents, respondent said, "'I cannot believe that my son did this to me.'" Over appellant's objection, Mahyar also testified that their mother, Paridokht, said she "'had no clue that this had happened.'" Paridokht did not testify.

D. *The Decision*

After trial, the court ruled in favor of respondent on all issues. Initially, the court found appellant had failed to establish that respondent lacked capacity to sue. According to the court, the evidence showed only that respondent was forgetful.

Turning to the merits of respondent's action, the court found the grant deed to be forged and thus void. Citing *Estate of Stephens* (2002) 28 Cal.4th 665, 677, the trial court applied the "interested amanuensis" rule, creating a

presumption that the deed was invalid.[3] (See *ibid.*) The court concluded that appellant had failed to rebut that presumption. It noted that because of respondent's age and forgetfulness, appellant "had the ability to do many things without [respondent]'s knowledge," and it credited Mahyar's testimony, which suggested respondent was unaware of the transfer.

As for appellant's cross-complaint, the court found the 2012 contract "unreliable, and therefore, unenforceable." This appeal followed.

DISCUSSION

A. *Motion for Mental Examination*

On appeal, appellant challenges the trial court's denial of his motion to require a mental examination of respondent. Responded argues that appellant has waived this challenge by withdrawing his request for a mental examination before the trial court denied it. We agree.

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[3] In the context of grant deeds, an amanuensis is a person who signs the grantor's name on the deed with the grantor's express authority. (*Estate of Stephens*, *supra*, 28 Cal.4th at pp. 670-671.) Under the "[i]nterested [a]manuensis" rule, when an amanuensis is also a beneficiary of the transfer, the deed is presumed invalid. (*Id.* at pp. 677-678.) "In such a case, the interested amanuensis bears the burden to show that his or her signing of the grantor's name was a mechanical act in that the grantor intended to sign the document using the instrumentality of the amanuensis." (*Id.* at p. 678.)

In his "Supplemental Brief," appellant stated that a mental examination was "no longer necessary" and instead asked the court to schedule a hearing about respondent's capacity to sue. Having told the trial court that a mental examination was unnecessary, appellant cannot challenge the denial of a mental examination on appeal. (Cf. *People v. Robertson* (1989) 48 Cal.3d 18, 44 ["Defendant, having withdrawn his objection to the evidence, cannot now complain of its admission"].)

In seeking to avoid this conclusion, appellant asserts the trial court had denied a mental examination before he filed his supplemental brief, and thus that this filing did not constitute a waiver. He is mistaken. While the trial court initially ordered respondent to submit to a deposition "in lieu of a mental examination," it denied the motion for a mental examination only after appellant stated an examination was "no longer necessary."

Appellant also points to the title of his filing, "Supplemental Brief in Support of Motion for Mental Examination of [Respondent]," and to his request for a hearing on respondent's capacity to sue. He argues the filing was therefore a "reiteration," rather than a revocation, of his request for a mental examination. Notwithstanding the filing's title, however, the trial court was entitled to look to its substance and the requested relief to determine appellant's position. (See *Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 187, 193 [""The nature of a motion is determined by the nature of the relief sought, not

by the label attached to it"].) And as for appellant's request for a hearing on respondent's capacity to sue, it showed only that appellant continued to maintain that respondent lacked that capacity. His assertion that a mental examination was unnecessary disclaimed continued interest in the examination and constitutes a waiver of the issue on appeal. (Cf. *People v. Robertson*, *supra*, 48 Cal.3d at p. 44.)

B. *Evidentiary Challenges*

Appellant challenges two of the trial court's evidentiary rulings. We review such rulings for abuse of discretion. (See *People v. Goldsmith* (2014) 59 Cal.4th 258, 266.) "Specifically, we will not disturb the trial court's ruling 'except on a showing the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.'" (*Ibid.*) A miscarriage of justice results only if "it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error." (*People v. Watson* (1956) 46 Cal.2d 818, 836.)

1. *Mahyar's Testimony about Paridokht's Statement*

Appellant contests the admission of Mahyar's testimony that Paridokht said she "'had no clue'" about the

deed transfer.[4] Before the trial court, appellant objected to this testimony on hearsay grounds, but the court overruled his objection. Appellant argues this was an abuse of discretion. Respondent contends the testimony was not hearsay because he offered it to prove Paridokht's state of mind rather than for the truth of the matter asserted.

We need not decide whether the testimony was admissible, as appellant fails to show that its admission was prejudicial. Paridokht's unawareness of the deed was arguably circumstantial evidence that respondent was unaware of it. But respondent also presented direct evidence on that issue: he testified that he had refused to give appellant the house, and Mahyar testified that respondent had expressed disbelief after learning of the transfer. The contested testimony was therefore of marginal value. Accordingly, there is no reasonable probability that its admission affected the outcome. (See *People v. Watson*, *supra*, 46 Cal.2d at p. 836; *People v. Lazarus* (2015) 238 Cal.App.4th 734, 792 [where probative value of contested evidence was marginal, any error in its admission was necessarily harmless].)

Moreover, the trial court made no mention of the contested testimony in finding that respondent had not authorized the transfer. Instead, the court applied the

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[4] Appellant does not challenge the admission of testimony about respondent's statements after Mahyar showed him the deed.

"[i]nterested [a]manuensis" rule, leading to a presumption that the deed transfer was invalid. (See *Estate of Stephens*, *supra*, 28 Cal.4th at pp. 676-677.) Based on respondent's circumstances and Mahyar's testimony that respondent was unaware of the transfer, the court found that appellant had failed to rebut that presumption. Given that the court did not rely on the contested evidence, any error in its admission was harmless. (See *South Bay Irri. Dist. v. California-American Water Co.* (1976) 61 Cal.App.3d 944, 984 ["where it appears the trial court did not rely upon the improperly admitted evidence . . . any error in its admission is not prejudicial"]; cf. *Dobos v. Voluntary Plan Administrators, Inc.* (2008) 166 Cal.App.4th 678, 689 [any error in trial court's factual finding was harmless because it did not rely on that finding in deciding the ultimate issue].)

2. *Evidence of the Parties' Mutual Check-Writing Authority*

a. *Background*

At trial, appellant testified about a check drawn on one of his business accounts, written to the order of respondent. According to appellant, respondent had signed the check in appellant's name, and this was routine. Appellant's counsel then asked appellant if he and respondent had an "understanding" that they could sign each other's name.

Respondent objected that this line of questioning would necessitate an undue consumption of time under Evidence

Code section 352.[5] He claimed appellant would need to testify about additional documents the parties had signed in each other's name and about the circumstances surrounding their signatures. The trial court agreed and sustained the objection.

b. *Analysis*

Appellant argues the trial court abused its discretion under section 352 in curtailing his testimony about the parties' authority to sign each other's name on checks. Section 352 grants courts discretion to exclude evidence "if its probative value is substantially outweighed by the probability that its admission will," among other things, "necessitate undue consumption of time." Appellant contends he could have established the parties' mutual check-writing authority by testifying about "just a few" checks. He claims such testimony would have been "highly probative of the ultimate issue in the case," whether he had authorization to sign respondent's name on the grant deed. We disagree.

First, the probative value of this testimony was limited. It is one thing for the parties to have had a general understanding authorizing them to sign each other's name on checks. It is another for respondent to have authorized appellant to sign respondent's name on a deed transferring

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[5] Undesignated statutory references are to the Evidence Code.

ownership of respondent's home. Appellant's resort to a notary public who falsely attested that respondent had signed the deed in his presence illustrates the extraordinary nature of the transaction. And appellant does not contend that either party had signed the other's name on any other instrument relating to real estate. The contested testimony therefore had only a slight tendency to show that any unwritten understanding about the parties' mutual signing authority encompassed real-estate transactions.

Next, establishing the parties' mutual check-writing authority likely would have required considerable time. As appellant acknowledges, testimony about multiple checks would have been necessary. And as respondent argued below, and appellant does not contest, this endeavor would have required appellant to describe the circumstances surrounding each check. Relevant circumstances might have included the nature of the account on which each check was drawn, the amount and purpose of each check, and the parties' respective knowledge about the signature of each check. Respondent would then have been entitled to cross-examine appellant on each check, resulting in a mini-trial on this collateral issue. Given the marginal probative value of the testimony appellant sought to present and the probability that it would have entailed undue consumption of time, the trial court did not abuse its discretion in curtailing it. (See *People v. Hamilton* (2009) 45 Cal.4th 863, 929-930 [evidence properly excluded under section 352

where it had "limited probative value" but would have required "'a mini-trial'" on a peripheral issue].)

DISPOSITION

The judgment is affirmed.

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MANELLA, P. J.

We concur:

COLLINS, J.

DUNNING, J.*

*Judge of the Orange County Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.